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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1157

MARY KOVACS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

McGrew Willis
215 S. La Cienega Boulevard
Beverly Hills, California
Attorney for Petitioner

E. L. Mershenhall, Inc., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-8080

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INDEX

Opinions Below 2
Jurisdictional Grounds 2
Questions Presented for Review 3
Statutes Involved 4
Statement of the Case 4
Argument 8
Conclusion 12
Appendix A, Opinion of the United States Court of Appeals for the Ninth Circuit A1
Appendix B, Summary Judgment of the District Court of Appeal A7
Appendix C, Judgment of the Superior Court of the State of California A14
Findings of Fact and Conclusions of Law A16

Table of Cases

Commissioner v. *Stearn*, 357 U.S. 39 9
In re Kovacs Estate, 227 C.A.2d 309 ..... 2, 6
In re McKinney, 15 Fed. 535 (1883) 11, 12
Rowen v. *Commissioner*, 215 F.2d 641 ..... 10, 11, 12
United States v. *Behrens*, 230 F.2d 504 ..... 10, 11, 12
United States v. *Bess*, 357 U.S. 51 ..... 2, 3, 7-8, 9, 12

Statutes

26 U.S.C. 1958 Ed., Sec. 6321 ..... 4, 9
28 U.S.C. §1254 (1) 2
28 U.S.C., Sections 1340 and 1345 4

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Petitioner, Mary Kovacs, mother of taxpayer Ernest Kovacs, deceased, respectfully petitions this Honorable Court and prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, which said judgment affirmed a summary judgment of the United States District Court for the Southern District of California, Central Division, foreclosing tax liens against two life insurance policies on the life of deceased taxpayer, Ernest Kovacs, naming his mother, petitioner here, beneficiary.

A.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit rendered herein on January 7, 1966, is annexed hereto as Appendix "A". The summary judgment of the District Court of Appeal is found in the record herein in Vol. One, at page 115. The opinion in *In re Kovacs Estate*, 227 C.A. 2d 309, referred to by the United States Court of Appeals in its opinion, is annexed hereto as Appendix "B". The subsequent judgment of the Superior Court of the State of California in the aforesaid proceedings, entered on October 14, 1965 and referred to by the United States Court of Appeals, together with the court's Findings, is annexed hereto as Appendix "C".

B.

JURISDICTIONAL GROUNDS

The judgment of the United States Court of Appeals for the Ninth Circuit, which this petition seeks to have reviewed, is dated and was entered January 7, 1966.

Jurisdiction is believed to be conferred on this Court to review the judgment in question by Writ of Certiorari pursuant to 28 U.S.C. §1254 (1).

The jurisdiction of this Court is invoked on the ground that the Court of Appeals judgment in question has decided an important question of federal law which has not been, but should be, settled by this Court; and on the further ground that the application by the courts below and by the federal government of the rule laid down in the recent case of *United States* v. *Bess*, 357 U.S. 51, has resulted in

such an inequitable and unconscionable collection of government revenues as to call for a reconsideration of the ruling in that case.

C.

QUESTIONS PRESENTED FOR REVIEW

1. The collection of federal taxes must be subject to uniform principles of federal law established by the federal courts to fairly implement the collection of government revenues, and not left to diversified state statutes or to arbitrary and inequitable action by the federal government.

2. The rule established in *United States* v. *Bess*, 357 U.S. 51, that after the death of the taxpayer the lien of the federal government for unpaid income taxes attaches to the proceeds of the life insurance policies to the extent of the cash surrender value of said policies, is not in conformity with the strict legal rights created by such policies. The harsh, unrealistic and inequitable results of the application of such a rule, as evidenced by the case at bar, requires a re-appraisal of the rule in the *Bess* case and a re-analysis of the cases upon which that rule was founded. It is respectfully submitted that the *Bess* case should be, and of right ought to be, overruled and the rule clearly established that once a taxpayer has died, the surrender value of the policy dies with him and the beneficiary takes the proceeds clear and free from any alleged lien of the federal government for unpaid taxes.

3. If the rule in *United States* v. *Bess* is to be applied to the case at bar, it is respectfully submitted that it is incumbent upon the federal government to join the taxpayer's administratrix as an indispensable party and to prove that the estate is insolvent and unable to pay the taxes. If the taxpayer's estate is sufficient to pay the taxes,

the federal government ought not to be permitted, at its whim or discretion, to take, instead, the proceeds of life insurance policies left by the deceased taxpayer for his mother.

D.

STATUTES INVOLVED

That provision of the Internal Revenue Code of 1954 under which the federal government asserts its rights herein, reads as follows:

§6321—Lien for Taxes. "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any cost that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." (26 U.S.C. 1958 Ed., Sec. 6321.)

E.

STATEMENT OF THE CASE

Original jurisdiction in the District Court below arose under 28 U.S.C., Sections 1340 and 1345, the action being one to foreclose a lien for unpaid taxes.

The following is a statement of the undisputed facts established by the pleadings below and upon which the District Court rendered summary judgment in favor of the Government.

In 1951 Ernest Kovacs purchased two policies of life insurance from Bankers Life in the face amounts of $30,000.00 and $20,000.00. He named his mother, petitioner

herein, primary beneficiary under each policy and designated that upon his death his mother was to receive an immediate cash payment of $5,000.00 and thereafter $400.00 per month, until the total sum of $50,000.00 was exhausted.

Prior to the death of the taxpayer, the Government filed tax liens against this insurance and other property in the total amount of $232,861.94. Of this sum, the Government claimed that $132,838.21 was owing separately from Kovacs, $90,369.07 was owing jointly from Kovacs and Edith Adams Kovacs, his wife, and $9,654.66 was owing separately from Edith Adams Kovacs.

Ernest Kovacs was killed in an automobile accident on January 13, 1962, at which time the two policies referred to had a combined cash surrender value of $7,402.92.

Edith Adams Kovacs was appointed administratrix of her husband's estate. The Government filed a claim in the estate for the balances due on the tax liens. The estate was appraised at $1,966,472.88. There was additional joint tenancy property, being the residence of the deceased taxpayer, having a value of $124,000.00. Ernest Kovacs left another life insurance policy in the amount of $500,000.00, naming his widow, Edith Adams Kovacs, as beneficiary thereof, which said policy had no cash surrender value.

In July and September of 1962, the Government entered into agreements with Edith Adams Kovacs, in her capacity as administratrix of taxpayer's estate and also in her individual capacity, by which she purchased from the estate the Raquet Club in Los Angeles, free and clear of tax liens, and also purchased all remaining personal property in the estate free and clear of tax liens.

These agreements provided that the proceeds of these purchases were to be applied not against the earlier separate tax liabilities of Ernest Kovacs, but the later joint income

tax liabilities of Ernest Kovacs and Edith Adams Kovacs for the years 1958 through 1961. The result was that the liability of Edith Adams Kovacs in her individual capacity was reduced and the estate was depleted of monies which would otherwise have been available for the payment of the earlier separate tax liability of decedent.

In December, 1962, Mary Kovacs commenced proceedings in the Los Angeles Superior Court for the removal of Edith Adams Kovacs as administratrix on the grounds that the latter had wrongfully mismanaged, wasted and neglected the estate. It was contended by the administratrix in that court proceeding that Mary Kovacs, since she did not share in the estate in any way, was not an interested party and could not maintain such a petition. Mary Kovacs asserted that she was an interested party by reason of the fact that, if the estate was properly managed and the taxes paid, the lien which the Government had asserted against the cash surrender value of the policies in which she was named beneficiary would be discharged.

The state trial court initially ruled that Mary Kovacs was not an interested party and dismissed the petition, but that decision was reversed by the state appellate court on May 19, 1964. (*In re Kovacs' Estate*, 227 C.A. 2d 308, Appendix "B").

On May 21, 1964, the Government filed an action against Bankers National Life Insurance Company and Edith Adams Kovacs, as guardian of Bette Lee Kovacs and Kippie Kovacs, and Mary Kovacs, petitioner herein, seeking to foreclose tax liens to the extent of the cash surrender value of the two policies of life insurance left by the deceased taxpayer naming his mother beneficiary thereof.

Mary Kovacs filed a motion to dismiss the action on the ground Edith Adams Kovacs as administratrix of the estate

of Ernest Kovacs was an indispensable party. This motion was denied. Whereupon, Mrs. Kovacs filed an answer in which the indispensable party issue was again raised and dismissal was sought on the additional grounds of waiver and estoppel. Mrs. Kovacs also asked for an adjudication that the proceeds of the life insurance policies were her property and the United States had no right, title or interest or lien thereon, and for an order requiring Bankers Life to pay such proceeds to Mary Kovacs. The insurance company and Edith Adams Kovacs, as guardian ad litem for the children, filed answers disclaiming any interest in the proceeds of the policies.

The District Court entered summary judgment against petitioner herein and in favor of the Government on January 5, 1965. (Record, Vol. One, page 115).

Subsequent to summary judgment being rendered against her in the United States District Court, Mary Kovacs renewed her petition in the state trial court in an attempt to remove the administratrix. That court again ruled that she had no interest in the estate and based its ruling, this time, on the grounds that since the Government had already taken the insurance proceeds the estate could not be now compelled to pay the taxes and, as a result, her financial interest in the estate had terminated.

An appeal from the judgment of the state trial court was filed, but subsequently abandoned; it being determined that further recourse to the state courts was useless.

Petitioner herein appealed to the United States Court of Appeals from the summary judgment entered against her in the District Court, and on January 7, 1966, that court filed and entered an opinion affirming the judgment of the trial court. (Appendix "A").

The circuit court based its affirmance of the trial court's summary judgment on the rule laid down in *United States*

v. *Bess*, 357 U.S. 51. The opinion of the court below stated that there was nothing in the *Bess* case to indicate that the insolvency of the taxpayer's estate was a condition precedent to the Government's right to foreclose its tax lien on the cash surrender value of the insurance policies.

Mr. Justice Chambers in a concurring opinion stated:

> "I concur in the foregoing simply because I think my oath requires me to do so. And, for the same reason, I assume Judge Hamley has written the opinion and Judge Ely has concurred.
>
> "Prima facie, it looks as if, within the limits of discretion permitted the government by the relevant statutes, an injustice is being done Mary Kovacs."

ARGUMENT

In the case at bar, taxpayer's wife received one-half million dollars in insurance proceeds free of the government's claim, inasmuch as the policy had no cash surrender value. It is contended that the taxpayer's estate has not been shown to be insolvent and unable to pay the taxes claimed by the government, but nevertheless, the government is permitted to foreclose a tax lien to the extent of the cash surrender value ($7,402.92) against two policies of life insurance left by deceased taxpayer naming his mother, petitioner herein, beneficiary thereof.

Mr. Justice Chambers indicated in the concurring opinion in the Circuit Court, that the government might, in the exercise of some discretion, have brought about a more equitable apportionment of the liabilities of the deceased taxpayer. It is submitted, however, that Congress, in enacting the Statute relied upon by the federal government, never intended to place such discretionary power in the hands of a government agency, and that it is for the

federal courts to establish rules to determine the liability for federal taxes based upon uniform, equitable, and fair principles.

It appears that under the present state of the law, if the government sought to impose liability on Mary Kovacs as transferee under Section 6901 (a) (1) of the Internal Revenue Code of 1954, her insurance proceeds would be exempt under state law and under the ruling in *Commissioner* v. *Stearn*, 357 U.S. 39. In such a situation, the collection of government revenues would be determined by state law.

In the case at bar, however, the government proceeds under the lien theory provided in Section 6321 of the Code and under the ruling in *United States* v. *Bess*, 357 U.S. 51, has recovered the cash surrender value of the policies; a state law exempting insurance proceeds having no effect on the lien, inasmuch as state law cannot invalidate or reduce the extent of a federal lien.

Thus, in the one instance we have liability for federal taxes determined by state law and, yet, in another instance, the liability being determined by a federal statute. It is submitted, that any such state of the law is bound to result in inequities as exemplified by the case at bar, and that it is up to the federal courts to establish some uniform principles for the collection of government revenues under the applicable code sections.

In the *Bess* case, it was held that the government could enforce its lien to the extent of the cash surrender value on the theory that, in effect, this was not taking the proceeds of the insurance but only taking from the insurance company that portion of the premiums paid by the deceased and held by it as representing the cash surrender value of the policy.

It is submitted, that this is a strained and unrealistic interpretation of the rights of the parties under the particular policies. Regardless of what monies an insured may have paid in, his rights to the cash surrender value arise out of the contract of insurance itself and from no other source. The right to the cash surrender value dies with the insured, and there is no right, thereafter, in his estate or in any other legal entity to assert any legal rights under that provision in the policy.

If the right to the cash surrender value terminates on the death of the insured, how can a government lien continue to attach to something which legally does not exist?

After the death of the taxpayer here, Mary Kovacs was to receive only $5,000.00 in cash out of the two policies and an annuity of $400.00 a month thereafter. The insurance company, under the terms of the policies, was not even under a legal obligation to pay any sum of money to any person which was the equivalent of the cash surrender value of the policies. Under this situation, how can it be said, even by the most remote theory, that the insurance company has in its possession a fund which represents the cash surrender value of the policies?

The theory that, somehow, the cash surrender value survives the death of the insured, appears to have arisen through a line of cases, the principal ones of which appear to be *United States* v. *Behrens*, 230 F.2d 504, and *Rowen* v. *Commissioner*, 215 F.2d 641.

In *United States* v. *Behrens*, decided by the Second Circuit in 1956, Mr. Justice Hand, speaking for himself and Mr. Justice Medina, strongly opposed the theory that the surrender value survives the death of the insured. In that case, he stated:

> "Considered strictly upon the basis of the legal rights created, the lien on the 'surrender values' came to an

> end with Behrens' death. The obligation of an insurer in a policy of life insurance is made up of a number of promises, of which one is to pay the beneficiary the amount of the insurance—the 'proceeds'—and another is to pay the 'surrender value' to the insured upon his demand. The performance of the promises are not only separate, but inconsistent with each other; the payment of the 'surrender value' cancels the promise to pay the 'proceeds' and the promise to pay the 'proceeds', assumes that the insured has not demanded and received the 'surrender value'."

Mr. Justice Hand, in the *Behrens* case, then goes on to state that regardless of his views, he must follow the ruling laid down in the earlier case of *Rowen* v. *Commissioner*.

An examination of the opinion in *Rowen* v. *Commissioner* reveals that Mr. Justice Hand indicated a disapproval of the rule that the surrender value survives the death of the insured, and indicated that he was not certain which way he would decide the question if it had come to him "res nova". He felt, however, that the interpretation set forth by Judge Addison Brown in *In re McKinney*, 15 Fed. 535, decided in 1883, was controlling.

If we go back and examine the opinion by Judge Brown in the *McKinney* case, we find that that case did not involve a question of the government taking life insurance proceeds on the theory of the cash surrender value. The *McKinney* case involved the interest of an assignee in bankruptcy in a policy of life insurance payable on taxpayer's death to his executors, administrators or assigns. In that case, the widow had paid the premiums following discharge of the bankrupt and up until the death of the bankrupt. The court held that the assignee had no right to the proceeds, only a right to the cash surrender value at the time of the bankruptcy.

It therefore clearly appears that the concept that, somehow, a cash surrender value survives the death of the

insured, arose in a situation wherein the court in the *McKinney* case sought to obtain for the widow the proceeds of the insurance policy, and no consideration was given, in that case, to the question of the extent to which a government lien for taxes may follow insurance proceeds.

It is respectfully submitted, that the *Behrens, Rowen,* and *McKinney* line of cases provides no strong foundation for the ruling established by the *Bess* case and rather, to the contrary, the clear doubts expressed in those cases require a reappraisal of the rule laid down in *Bess.*

It is respectfully urged that the Court reconsider the ruling in *Bess,* overrule that case, and adopt the unescapable conclusion, as indicated by Mr. Justice Hand in the *Behrens* case, that there is no logical escape from the holding that the surrender value comes to an end on the insured's death.

If the *Bess* case is not to be overruled, it is respectfully submitted that, notwithstanding the rule in *Bess,* that case must be distinguished, since there the estate was clearly insolvent; and that, in the case at bar, the Government be required to join the administratrix as an indispensable party and prove the insolvency of the estate or that it would be useless to proceed against the estate, in any action to perfect and foreclose a lien on the cash surrender value of life insurance policies left by decedent taxpayer.

CONCLUSION

Wherefore, petitioner earnestly urges the Court to grant this petition.

Respectfully,

McGrew Willis
Attorney for Petitioner

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARY KOVACS,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 19,953

[January 7, 1966]

Appeal from the United States District Court for the Southern District of California, Central Division

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Before: CHAMBERS, HAMLEY and ELY, Circuit Judges

HAMLEY, Circuit Judge:

The United States brought this action to foreclose tax liens upon the cash surrender value of two life insurance policies owned by the taxpayer, Ernest Kovacs, at the time of the latter's death on January 13, 1962. The defendants are Bankers National Life Insurance Company, which issued the policies, Mary Kovacs, mother of the taxpayer, who is the primary beneficiary under each policy, and Edith Adams Kovacs, as legal guardian of Bette Lee Kovacs and Kippie Kovacs, contingent beneficiaries under the policies.

Mrs. Kovacs filed a motion to dismiss the action on the ground that Edith Adams Kovacs, as administratrix of the estate of Ernest Kovacs, is an indispensable party. This

motion was denied, whereupon Mrs. Kovacs filed an answer in which the indispensable party issue was again raised, and dismissal was sought on the additional grounds of waiver and estoppel. Mrs. Kovacs also asked for an adjudication that the proceeds of the insurance policies are her property and that the United States has no right, title, interest or lien thereon; and for an order requiring Bankers Life to pay such proceeds to Mary Kovacs. The insurance company and Edith Adams Kovacs, as guardian ad litem for the children, filed answers disclaiming any interest in the proceeds of the policies.

The Government moved for summary judgment granting the relief prayed for in its complaint. This motion was granted and Mrs. Kovacs then took this appeal.

We first summarize the facts essential to the consideration of the several questions which are presented.

In 1951, Ernest Kovacs purchased two policies of life insurance from Bankers Life in the face amounts of $30,000 and $20,000. The primary beneficiary under each policy is Mary Kovacs, and the contingent beneficiaries are Bette Lee and Kippie Kovacs, children of the taxpayer. Prior to the death of the taxpayer, the Government filed tax liens against this insurance and other property in the total amount of $232,861.94. Of this sum, the Government claimed that $132,838.21 was owing separately from Kovacs, $90,369.07 was owing jointly from Kovacs and Edith Adams Kovacs, his wife, and $9,654.66 was owing separately from Edith Adams Kovacs.

Kovacs died on January 13, 1962, at which time the two policies referred to above had a combined cash surrender value of $7,402.92. Edith Adams Kovacs was appointed administratrix of her husband's estate. The Government filed a claim in the estate for the balances due on the tax

liens. The estate was appraised at $1,966,472.88. There was additional joint tenancy property having a value of $124,000, and Edith Adams Kovacs was named beneficiary of another life insurance policy in the face amount of $500,000.

In July and September, 1962, the Government entered into certain agreements with Edith Adams Kovacs as administratrix, and also in her individual capacity. Under these agreements she purchased from the estate certain real and personal property free and clear of tax liens. These agreements provided that the proceeds of these purchases were to be applied not against the earlier separate tax liability of Ernest Kovacs, but against the later joint income tax liabilities of Ernest Kovacs and Edith Adams Kovacs for the years 1958 through 1961. The result was that the liability of Edith Adams Kovacs in her individual capacity was reduced and the estate was depleted of monies which would otherwise have been available for the payment of the earlier separate tax liability of decedent.

In December, 1962, Mary Kovacs commenced proceedings in the Los Angeles Superior Court for the removal of Edith Adams Kovacs as administratrix on the ground that the latter had wrongfully mismanaged, wasted and neglected the estate. Mary Kovacs contended in that action that the administratrix has a duty to pay from the assets of the estate whatever is owing for taxes assessed against the decedent. If payment is made from the estate the lien which the Government has asserted against the cash surrender value of the policies in which Mary Kovacs is named beneficiary will be discharged.

This action was initially dismissed by the state trial court, but that decision was reversed on May 19, 1964. *In re Kovacs Estate*, 227 C.A.2d 308. In the further proceedings in the state trial court a judgment was entered on October

14, 1965, favorable to the administratrix. An appeal from that judgment is now pending.

We called for supplemental briefs on the question of whether the disposition of the appeal now before us should be held in abeyance pending final determination of the state proceeding. In their respective supplemental briefs both parties have asked us not to delay disposition of this appeal. We accede to their request.

Mary Kovacs' principal contention on this appeal is that the cash surrender value of the two policies in question, of which she is the primary beneficiary, may not be taken without a finding that the taxpayer's estate is insolvent or that the Government has exhausted its remedies against the estate, or that it would be useless to proceed against the estate.

The claim of the Government to the cash surrender value of these policies does not rest upon transferee liability under section 6901(a) of the Internal Revenue Code of 1954 (Code). Nor is it predicated upon the taxpayer's insolvency. The Government's claim rests upon tax liens against all the property of the taxpayer, provided for under sections 6321 and 6322 of the Code.

This lien attaches to the cash value of any life insurance policies owned by the taxpayer, provided he has reserved the right to change beneficiaries or to receive the cash surrender value at the time the lien arose. It was held in *United States* v. *Bess,* 357 U.S. 51, that in such a case, upon the taxpayer's death, the proceeds pass to the beneficiary burdened with the federal lien in the amount of the cash value of the policy.

The Government now seeks to enforce that lien and may do so even though there may be other property in the estate adequate for all tax purposes. If there is an element of

unfairness here, it is not one which is cognizable in this lien enforcement suit, but must be dealt with in the pending state proceedings referred to above.

Appellant argues that the soundness of the *Bess* rule should be re-appraised in light of the facts of the case at bar and the seeming inequity which will result if the Government is allowed to foreclose its lien. The view that the insured's property interest in the cash surrender value ends at his death thus extinguishing any tax liens was flatly rejected by the Court in *Bess*. Until the Supreme Court chooses to depart from its pronouncement, we are obliged to follow the *Bess* case and its rationale.

The estate of the deceased taxpayer in *Bess* was insolvent at the time the Government sought to foreclose its lien. There is no such showing here. However, there is nothing in the *Bess* opinion which indicates that the insolvency of the taxpayer's estate is a condition precedent to the Government's right to foreclose its tax lien on the cash surrender value of the insurance policies.

To impose such a condition would accord the Government a status less than that of a secured creditor. This would be contrary to the underlying purpose of section 6321 of the Code. Also, to require the Government to pick out and foreclose only those liens which will create the least hardship on third parties, would impose a considerable burden on the revenue collection process. The hardship resulting from the foreclosure of tax liens after the death of a taxpayer stems not so much from the Government's action as from the failure of the taxpayer to discharge his tax liability.

Appellant argues that, in any event, no liens attached to the property of Ernest Kovacs since a lien does not attach under section 6321 until the delinquent taxpayer "neglects or refuses to pay the same after demand." The facts

indicate that after the assessment of unpaid taxes was made on January 6, 1961, several payments were made toward the total liability. Appellant asserts that these payments, three of which were made by the taxpayer prior to his death and two of which were made from his estate, prove that there has been no neglect or refusal as required by section 6321.

All of these payments, however, have been applied to the taxpayer's liability for the year 1956. As for the assessment for 1957, there has been no reduction in that liability by either the taxpayer or the estate, and with regard to the 1957 liability there has been the requisite neglect and refusal. Since the assessed liability for the year 1957 is far in excess of the cash surrender value of the insurance policies, there is no need to consider further the validity of the Government's liens for the unpaid taxes of 1956. See *Bess* v. *United States*, 357 U.S. 51, 55.

In view of what is said above, the administratrix of the estate is not an indispensable party and it was appropriate to decide the case on the basis of a motion for summary judgment.

Affirmed.

CHAMBERS, Circuit Judge, concurring:

I concur in the foregoing simply because I think my oath requires me to do so. And, for the same reason, I assume Judge Hamley has written the opinion and Judge Ely has concurred.

Prima facie, it looks as if, within the limits of discretion permitted the government by the relevant statutes, an injustice is being done Mary Kovacs.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT
DIVISION THREE

Estate of ERNEST KOVACS, Deceased.
MARY KOVACS, Petitioner and Appellant,
vs.
EDITH ADAMS KOVACS, as Administratrix, etc., Objector and Respondent.

Civil No. 27496

(Filed in the District Court of Appeal, Second District, May 19, 1964. J. F. Alley, Clerk.)

Appeal from an order of the Superior Court of Los Angeles County granting motion to quash citation issued on petition for removal of administratrix. Clyde C. Triplett, Judge. Reversed.

McGrew Willis for Petitioner and Appellant.

Beilenson, Meyer, Rosenfield & Susman and George C. Zachary for Objector and Respondent.

The sole question presented by this appeal is whether appellant is a "person interested in the estate" within the meaning of Probate Code, section 522, who is entitled to a hearing on her petition for the removal of the administratrix.

On February 13, 1962, letters of administration were issued to the widow of the deceased, and she has served

as administratrix ever since. On December 12, 1962, appellant, who is the mother of the deceased, filed a petition for removal of the administratrix. This petition, as amended on December 24, 1962, alleges in substance that the administratrix has been guilty of serious misconduct.*

The amended petition discloses two theories under which appellant initially claimed to have an interest in the estate. The first is that appellant was, as of that time, petitioning for her appointment as guardian of the minor children of the decedent, who are heirs of the decedent. Appellant subsequently abandoned her attempt to become guardian of these heirs, and this asserted ground of interest will therefore be disregarded.

Appellant's other theory of interest is based upon her rights in certain life insurance proceeds. Appellant's allegations on this subject are so well buried among recitals, immaterial matter and conclusions that we shall not attempt to state them in the words of the petition. The reporter's transcript of the argument in the probate court indicates that the attorney for the administratrix and the court both understood that the petitioner intended to allege, among other things, the following:

During his lifetime the decedent had purchased policies of life insurance on his life in the face amount of $50,000, naming appellant as beneficiary. As of the date of death

*A demurrer was interposed upon the grounds, among others, that the petition was uncertain, ambiguous and unintelligible in several respects. The probate court has never ruled upon this demurrer, and we therefore avoid any comment as to the sufficiency of particular allegations of misconduct. We assume here, as did the probate court, that the petition contains sufficient factual allegations to state a cause of action for removal. The brief of the administratrix does not contend that the order could be affirmed upon the ground that the petition shows on its face that no cause of action exists.

these policies had a cash surrender value of $7,402.92. Before the death of decedent the federal government asserted an income tax lien against the cash surrender value of these policies. By reason of the pendency of this lien, the insurance company is holding $7,402.92 of the proceeds of the policies, and will continue so to do until the lien is released or foreclosed. It is the duty of the administratrix to pay from the assets of the estate whatever is owing to the federal government for taxes imposed against the decedent; and if the administratrix does devote the assets of the estate to the payment of this liability, the lien will be discharged and appellant will receive her $7,402.92 from the insurance company.

Although these facts are not all clearly alleged in the amended petition, it appears that the probate court was aware that appellant would have so alleged if given an opportunity to amend.

Upon the filing of the petition the court cited the administratrix to show cause why her letters should not be revoked.

The administratrix demurred to the amended petition upon several grounds and moved to quash the citation upon the ground, among others, that appellant is not a party interested in the estate and has no standing to institute proceedings to revoke letters of administration. The motion to quash was also made upon the ground that the petition lacked merit. Inasmuch as the merits of the charges against the administratrix were never considered or ruled upon by the probate court, it is unnecessary to discuss that subject here. In passing, it is noted that the attorneys for the administratrix have contended throughout that there has been no misconduct and that the assets in the estate are insufficient to discharge all of the tax liabilities of the deceased.

After a hearing in which counsel argued the legal issues raised by the motion to quash, the court made an order, dated February 7, 1963, as follows: "Motion to quash granted on grounds petitioner not an interested party."

Appellant has appealed from that order, which, in effect, is a refusal by the probate court to make an order revoking letters of administration, and is appealable under Probate Code, section 1240.

Probate Code, section 521, provides that "Whenever a judge of the court has reason to believe from his own knowledge, or from credible information," that an administrator has mismanaged an estate, the court shall cite the administrator to appear for a hearing.

Probate Code, section 522, provides:

> "Any person interested in the estate may appear at the hearing and file allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, and the issues shall be heard and determined by the court."

The code does not define the phrase "Any person interested" or enumerate the kinds of persons who fall within that category. The fact that the Legislature has seen fit to use a term of such generality suggests an intention that the right to a hearing be afforded liberally, and not limited to a few easily identified classes such as creditors and heirs. Webster's Third New International Dictionary (1963) defines the word "interested" to mean "having a share or concern in some affair or project: liable to be affected or prejudiced." Certainly there is no legislative intent that the removal of an administrator be made the concern of only a limited class of suitors. On the contrary, under section 521 the court may act on its own motion,

and if the court sees fit to act upon the motion of any person whatsoever and finds grounds for removing the administrator, the removal is not erroneous merely because the moving party was not a "person interested." (*Estate of Gainfort*, 11 Cal. 2d 298; *Estate of Kelley*, 122 Cal. 379, 383.)

Some helpful analysis may be found in cases involving other kinds of probate hearings where by statute participation is limited to persons who are "interested."

Garwood v. *Garwood*, 29 Cal. 514, was an appeal from an order denying to Joseph Garwood the right to contest the account of an administratrix, under a statute which gave a right of contest to "any person interested in the estate." The Supreme Court concluded that Joseph had nothing but a spurious claim of heirship, which had been adjudicated against him in another proceeding, and upon this ground the order denying him the right to contest the account was affirmed. Before reaching this conclusion, the court made these observations (p. 519):

> "The rule is universal in all legal proceedings that parties not interested have no concern in them and cannot be allowed to intermeddle. If, then, a party seeks to interpose and participate in or originate a judicial controversy, and his right to interfere is denied, the first duty cast upon the Court is to determine whether such person has any interest whatever in the subject matter pending before it, and if it turns out he has none, he must be declared an intruder and excluded from any further participation. . . .
>
> "[P. 520.] Doubtless, in a case like the present, which is to a certain extent a preliminary proceeding, the question rests very much in the discretion of the Court, and any doubt as to the question of interest ought to be resolved in favor of the petitioner; and however remote or contingent his interest may be,

or, in other words, if he has the appearance of an interest, his right to contest ought not to be denied."

Estate of Atwood, 127 Cal. 427, was an appeal from an order removing an administratrix for failure to publish notice to creditors. The probate court had acted upon a petition for removal filed on behalf of the sister and niece of the deceased. It appeared that the estate was less than $1,500 and that the widow was entitled to have all of it set aside to her under what was then section 1469 of the Code of Civil Procedure. The Supreme Court concluded that there was no ground for removal of the administratrix and added, "Neither does it [the law] allow parties to come into court and put the machinery of the law in motion in matters in which they have no possible interest." (127 Cal. at 430.)

In *Estate of Brown,* 24 Cal. App. 2d 573, a person having a contingent future interest under a will was held to have standing to object to the accounts of the executor. The order of the probate court summarily denying relief for lack of interest was reversed.

Estate of Reinicke, 44 Cal. App. 2d 271, held that a judgment lien creditor of a beneficiary under a will had sufficient interest to contest the account of the executor. An order approving an account was reversed.

Estate of Hart, 51 Cal. 2d 819, held that a person claiming property adversely to the estate had no standing to object to an account, but after that claimant had obtained a money judgment for costs payable out of the estate, he did not acquire such an interest as to entitle him to be heard on objections to the administrator's account.

In interpreting Probate Code, section 370, which provides that "any person interested" may contest a will, the Supreme Court has held that the persons "interested" may

include a contingent remainderman under a testamentary trust created by a prior will (*Estate of Plaut*, 27 Cal. 2d 424) and a judgment creditor of a disinherited heir of the decedent (*Estate of Harootenian*, 38 Cal. 2d 242, 247).

On the other hand, in *Estate of Land*, 166 Cal. 538, a legatee under an earlier will was held not to be a "person interested" in contesting a later will because both wills gave that person exactly the same legacy.

The reasoning of the cited cases indicates that appellant here is a "person interested" who is entitled to a hearing under Probate Code, section 522.

Appellant is able to point to a definite financial benefit which will accrue to her if, as she alleges, the estate is solvent and if it is administered so as to pay the decedent's tax liabilities. If the taxes are paid by the administratrix, the $7,402.92 will be released to appellant. If the estate is wasted and the taxes not paid, the federal government will take the insurance money.

The admonition of the Supreme Court in the *Garwood* case (29 Cal. at 520) is that "any doubt as to the question of interest ought to be resolved in favor of the petitioner; and however remote or contingent his interest may be, or, in other words, if he has the appearance of an interest, his right to contest ought not to be denied."

The order is reversed.

FILES, J.

We concur.

SHINN, P. J.

FORD, J.

APPENDIX C

ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California
CRestview 1-9144
BRadshaw 2-0726

Attorneys for Respondent Edith Adams Mills, formerly Edith Adams Kovacs, Administratrix of the Estate of Ernest Kovacs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In the Matter of the Estate of
ERNEST KOVACS,
Deceased.

No. P 451691

Judgment

The motion of Petitioner to Set For Hearing the Amended Petition for Removal of Administratrix and For Issuance of a Citation to Edith Adams Kovacs as Administratrix of the Estate of Ernest Kovacs, Deceased, to Show Cause, If Any, Why Her Letters of Administration Should Not Be Revoked and the Motion of Respondent, the Administratrix of the Estate of Ernest Kovacs, Deceased, to Quash Citation and Dismiss Petition for Removal of Administratrix came on regularly for hearing in Department 9 of the above entitled court, the Honorable Donald R. Wright, Judge Presiding, on September 20, 1965, Petitioner being represented by her counsel McGrew Willis, and Respondent being represented by her counsel Rosenfeld, Meyer & Susman, by George C. Zachary; and the Court having heard and considered the argument of counsel and the memoranda

and declarations of the parties filed in connection with the aforesaid motions, and the entire file herein, and having heretofore made and caused to be filed its written findings of fact and conclusions of law, the Court, having been fully advised in the premises, and good cause appearing therefor:

NOW, THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

1. That the motion by Petitioner Mary Kovacs to Set for Hearing Amended Petition for Removal of Administratrix and for Issuance of a Citation to Edith Adams Kovacs as Administratrix of the Estate of Ernest Kovacs, Deceased, to Show Cause, If Any, Why Her Letters of Administration Should Not Be Revoked, is denied.

2. That the motion of Respondent Edith Adams Mills, formerly Edith Adams Kovacs, as Administratrix of the Estate of Ernest Kovacs, to Dismiss the Amended Petition For Removal of Administratrix and to Quash the Citation Issued by this Court on December 12, 1962 Requiring Said Respondent to Appear and Show Cause Why Her Letters of Administration in the above estate heretofore issued by her should not be revoked, is granted.

3. That the aforesaid Citation heretofore issued by this court is hereby quashed and the aforesaid Petition is hereby dismissed.

The Clerk is ordered to enter this Decree.

DATED this 7th day of October, 1965.

/s/ Donald R. Wright
Judge of the Superior Court

ROSENFELD, MEYER & SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California
CRestview 1-9144
BRadshaw 2-0726
Attorneys for Respondent Edith Adams Mills, formerly Edith Adams Kovacs, Administratrix of the Estate of Ernest Kovacs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In the Matter of the Estate of
ERNEST KOVACS,
Deceased.
} No. P 451691

Findings of Fact and Conclusions of Law

The motion of Petitioner to Set for Hearing the Amended Petition for Removal of Administratrix and For Issuance of a Citation to Edith Adams Kovacs as Administratrix of the Estate of Ernest Kovacs, Deceased, to Show Cause, If Any, Why Her Letters of Administration Should Not be Revoked and the Motion of Respondent, the Administratrix of the Estate of Ernest Kovacs, Deceased, to Quash Citation and Dismiss Petition for Removal of Administratrix came on regularly for hearing in Department 9, of the above entitled Court, the Honorable Donald R. Wright, Judge Presiding, on September 20, 1965, Petitioner being represented by her counsel McGrew Willis, and Respondent being represented by her counsel Rosenfeld, Meyer & Susman, by George C. Zachary; and the court having heard and considered the argument of counsel and the memoranda and declarations of the parties filed in connection with the aforesaid motions, and the entire file herein, and the matter having been submitted, the Court, having been fully advised in the premises, makes the following findings of fact:

1. On May 19, 1964, the District Court of Appeal, Second Appellate District, Division Three, reversed the order of the probate court which had dismissed the amended petition to remove Respondent as Administratrix of the above estate and quashed its citation issued in connection therewith on the grounds that Petitioner was not a party "interested" in the above estate within the meaning of §522 of the Probate Code. The District Court of Appeal held that Petitioner had an interest in the above estate for the following reason:

> "Appellant is able to point to a definite financial benefit which will accrue to her if, as she alleges, the estate is solvent and if it is administered, so as to pay the decedent's tax liabilities. If the taxes are paid by the administratrix, the $7402.92 will be released to Appellant. If the estate is wasted and the taxes not paid, the federal government will take the insurance money." (*Estate of Kovacs*, 227 C.A.2 308 at 313)

2. Petitioner has never filed a creditor's claim in the above estate and the time within which such claims may be filed has expired.

3. Decedent died intestate survived by a widow and three children.

4. Since the aforesaid decision by the District Court of Appeal, the United States Government has foreclosed on its tax lien on the cash surrender value, amounting to $7402.92, of two life insurance policies of which Petitioner was named beneficiary, has obtained summary judgment against Petitioner and the insurance company issuing said policies in the amount of said cash surrender value, together with its costs, has levied on said judgment and recovered the sum of $7402.92, together with its costs, and has applied said sum in partial payment of taxes owed to it by decedent.

5. The Respondent, as Administratrix, can no longer possibly pay any moneys to the United States Government which would result in the release or payment of any moneys to Petitioner.

CONCLUSIONS OF LAW

From the foregoing findings of fact, the Court makes the following conclusions of law:

1. Petitioner's interest in the above estate, based upon her interest in the cash surrender value of certain life insurance policies which was subject to a federal tax lien, terminated upon enforcement of such lien by the federal government and the application of the aforesaid cash surrender value toward the payment of taxes owed by decedent.

2. Since Petitioner was not an heir of the decedent and because Petitioner failed to file a creditor's claim in the above estate within the time fixed by the Probate Code, Petitioner has no interest in the above estate within the meaning of Section 522 of the Probate Code and has no standing to prosecute the proceedings initiated by the filing of her Petition to Remove Administratrix and the issuance of the Citation in connection therewith.

3. The motion to quash citation and dismiss the amended petition to remove Administratrix should be granted and the motion to set a hearing date on such petition and citation should be denied.

Let Judgment be entered accordingly.

DATED this 7th day of October, 1965.

/s/ Donald R. Wright
Judge of the Superior Court

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